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SUPREME COURT OF ARIZONA

ROY WARDEN,)	Arizona Supreme Court
Petitioner,)	No.
)	
v.)	Court of Appeals
)	Division 2
HON. EUGENE HAYS, Judge of the Tucson)	No. 2CA-SA2009-0076
City Court; HON. MITCHELL EISENBERG,)	
Judge of the Tucson City Court, and the ARI-)	Pima County Superior Court
ZONA COURT OF APPEALS, DIVISION 2)	No. CR 20083441
)	
Respondents,)	Tucson City Court
)	No. CR 7030208
and)	
)	
STATE OF ARIZONA,)	
)	
Real Party in Interest.)	

**PETITION FOR REVIEW OF A SPECIAL ACTION DECISION OF
THE ARIZONA COURT OF APPEALS, DIVISION 2¹**

Roy Warden, Petitioner
1015 W. Prince Road
#131-182
Tucson Arizona 85705
(520) 300-4596
roywarden@cox.net

¹ A Statement of the Issues presented to the Arizona Appellate Court immediately follows the Prayer on page 12.

I. INTRODUCTION

1. The foundational issues of the underlying case under review, in which Respondent Tucson City Court Judges have unconstitutionally applied Arizona's Disturbing the Peace and Making Threats and Intimidation statutes to arbitrarily decide who may exercise their First Amendment liberties and who must remain silent, presents constitutional issues of great public significance and statewide importance.
2. The facts which give rise to the pure issues of law Petitioner presented to the Appellate Court are not in dispute. They concern an exercise of core expressive freedoms and, by Order of the Tucson City Court which now prohibits Petitioner from "speak(ing) within 1000 feet of any public demonstration," a denial of fundamental rights guaranteed by both the constitutions of Arizona and the United States of America.
3. The U.S. Supreme Court has stated "(t)he loss of First Amendment Freedoms, for even minimal periods of time, unquestionably constitutes 'irreparable injury.'" Gentala v City of Tucson 213 F.3d 1055, 1061. In this exceptional case Respondent Tucson City Court Judges, by Order of the Tucson Municipal Court, have altogether suspended Petitioner's First Amendment rights.

II. STATEMENT OF FACTS

4. For the past six years Petitioner has investigated allegations of malfeasance within the legal and political institutions of Pima County and the State of Arizona, including the malfeasance of Pima County and Tucson City Officials who have used their public offices (1) to protect the financial interests of local contractors, etc., who now depend upon a continual flow of low cost illegal Mexican labor, and (2) to advance a political agenda, which includes but is not limited to the deliberate violation of federal immigration law, the flooding of the American Southwest with millions of illegal Mexican citizens, and the creation of a new empire called “Aztlan.”
5. Petitioner has used a public forum to challenge the rectitude of official action, and as a result of his political activities intended to protect the public interest, he has suffered numerous acts of retaliation from local officials, including 12 arrests, an unlawful eviction, the blocking of his email publications Common Sense II and CSII Press, excoriation in the local media, etc., all of which have ruined his professional reputation as an Arizona State Certified Legal Document Preparer, depleted his savings, and occasionally, placed him on the street.

1 6. Petitioner, who can find no graceful way to separate the practical
2 specifics of his vigorous exercise of First Amendment protected rights
3 to criticize the policies of government from the singular legal issue
4 presented to this court, now (reluctantly) reveals the 800 pound gorilla
5 in the room: He has often used a public forum to excoriate the policies
6 of the Arizona Supreme Court and the former Chief Justice of the
7 Arizona Supreme Court Ruth McGregor².

8 7. Petitioner has lived a number of years under totalitarian regimes in
9 North Africa where one may not challenge any government action,
10 judicial or otherwise. This experience has given Petitioner great insight
11 and appreciation for the core purpose of the First Amendment, the Rule
12 of Law, and the role of this Court in protecting the right of the people to
13 criticize the policies of all three branches of government.

² To examine the particulars of Petitioner's claim and the disturbing underlying issue—**(May Arizona Courts Refuse to Protect Expressive Rights When Justices Disapprove of the Content of the Political Message?)**—Google “Arizona Chief Justice Ruth McGregor” and read: Tucson Extremist Roy Warden’s Upcoming Rally to Impeach AZ Supreme Ruth McGregor, Arizona Supreme Court Chief Justice Ruth McGregor Announces Retirement, Arizona Supreme Court Chief Justice McGregor Resigns in Disgrace, and Right Winger Takes Credit for Justice’s Retirement, Despite Flawed Premise.

1 8. On October 05, 2009 Petitioner filed his Petition for Special Action with
2 the Arizona Appellate Court, Division 2.

3 9. On October 21, 2009 the Arizona Appellate Court denied jurisdiction.
4 See the Order of the Court, page 13, immediately following the State-
5 ment of Issues to the Appellate Court.

6 10. On November 09, 2009 the Arizona Appellate Court granted Petitioner
7 until December 21, 2009 to file his Petition for Review to the Arizona
8 Supreme Court.

9 **III. STATEMENT OF THE ISSUE**

10 Did the Arizona Court of Appeals Abuse It's Discretion and
11 Violate the Law as set forth by the Arizona Supreme Court in
12 Citizen v Miller and Dombey v Phoenix Newspapers, Inc., and
13 the Ninth Circuit Court of Appeals in Dream Palace v County of
14 Maricopa When It Declined Jurisdiction in a Petition for Special
15 Action Which Raised "serious First Amendment concerns?"³

16 **IV. LEGAL ARGUMENT**

17
18 11. Petitioner submits: the explicit language of the following three cases
19 require Arizona appellate courts to accept jurisdiction in special actions
20 raising serious constitutional concerns: Dombey v Phoenix News-
21 papers, Inc., 150 Ariz. 476 (1986), Dream Palace v County of Maricopa,

³ Arizona Appellate Courts must accept jurisdiction in cases raising "serious First Amendment concerns." Citizen Publishing Co. v Miller, 210 Ariz. 513, 516

1 384 F.3d 990 (9th Cir. 2004) and Citizen Publishing Co. v Miller, 210
2 Ariz. 513 (2005).

3 12. In Dombey, where an individual sued a newspaper for defamation, the
4 Court cited the U.S. Supreme Court:

5 “(The First Amendment...safeguards a freedom which is the
6 ‘matrix, the indispensable condition of nearly every other free-
7 dom.’ ” (citation omitted) Dombey at 482.

8
9 13. Moreover; the Dombey Court stated:

10 “Instances in which we exercise...discretion include issues of
11 statewide importance, those of constitutional dimension or situa-
12 tions in which the public interest is better served by having the
13 issue considered rather than deferred.

14
15 “(W)e have substantial doubt whether the Constitution would
16 permit us to avoid consideration of first amendment issues even if
17 we were so disposed. The United States Supreme Court has con-
18 sistently held that appellate courts must engage in independent
19 review of ‘constitutional facts’ in order to safeguard first amend-
20 ment protections.” Dombey at 482.

21
22 14. Regarding Arizona Court’s general discretion to deny jurisdiction
23 in special actions, the Ninth Circuit Court stated:

24 “Were this discretion unbounded, the special action would, or
25 course, provide no guarantee of judicial review on the merits. If,
26 on the other hand, the judge’s ‘discretion’ does not include the
27 ability to dismiss a petition where it is the only route by which the
28 petitioner can bring a constitutional challenge, then the mere use
29 of the term ‘discretion’ will not prevent the review from being
30 constitutionally sufficient.” Dream Palace at 1006
31

1 15. Furthermore; in Dream Palace the Court cited U.S. Supreme Court

2 Justice Holmes:

3 “(I)t is plain that a State cannot escape its constitutional obliga-
4 tions by the simple device of denying jurisdiction in such cases to
5 Courts otherwise competent.” Dream Palace at 1006.

6
7 16. In Citizen, which Petitioner cited extensively in his Petition for Special

8 Action, the Arizona Supreme Court ignored an otherwise sound policy

9 to deny review of orders refusing to grant summary judgment and

10 accepted jurisdiction “because of the importance of the issue (First

11 Amendment) presented.” Citizen at 515

12 “There is good reason to depart from this general rule...when a
13 suit raises serious First Amendment concerns...because of the
14 public’s significant first amendment interest...in avoiding a ‘chil-
15 ling effect’ on the freedom (of speech.)” Citizen at 516

16
17 17. In Citizen the “chilling effect” of First Amendment freedoms cited by

18 the Court was largely theoretical. In the instant case Petitioner has had

19 his rights suspended altogether by Order of the Tucson Municipal

20 Court, an order the authority for which a diligent search of all appro-

21 priate case law fails to reveal any precedence whatsoever.

22 18. And finally: In order to accept jurisdiction in Dombey and Citizen, the

23 Court had to (1) waive important procedural policies designed to pro-

1 mote “comity between courts and...judicial efficiency⁴”, and (2) weigh
2 the competing interests of protecting the expressive rights of powerful
3 corporations vs. the rights of individual litigants seeking legitimate
4 redress for alleged torts. Even though both decisions were couched in
5 lofty constitutional rhetoric, the practical consequence of at least the
6 decision in Citizen was to protect the financial interests of a politically
7 well connected commercial enterprise by denying a citizen his day in
8 court.

9 19. In the instant case, the Court (should) face no such difficulties in
10 weighing the right of the people to criticize the policies of government,
11 which is paramount and the core purpose of the First Amendment, vs.
12 the desire of government officials, judicial or otherwise, in remaining
13 aloof and beyond public reproach.

14 V. CONCLUSION

15 20. In America on Trial Alan Dershowitz, in analyzing Walker v Birming-
16 ham, 87 S.Ct. 1824, explained that in the sixties, the entire system of
17 justice in the southern states was “committed in theory to free speech
18 and equal rights for all, but in practice *used the police and the courts*
19 to silence the voice of political opponents.” (emphasis added)

⁴ Dombey at 482.

1 21. Petitioner, who has endured 12 arrests and five separate criminal prose-
2 cutions arising out of legitimate street protest and his excoriation of
3 public officials engaged in the promulgation of Open Border Policy,
4 earnestly believes the same conditions of oppression exist in Arizona
5 today and inspire his plea to this High Court.

6 22. Petitioner also believes the Constitution compels this Court to “con-
7 sider all issues, both factual and legal, which bear upon the consti-
8 tutional privileges accorded by the first amendment and article 2, §6 of
9 the Arizona Constitution,” as set forth by the Arizona Supreme Court
10 in Dombey, 482, 483, notwithstanding the fact that present or former
11 members of the Court may be embarrassed or angered by the political
12 content of Petitioner’s message.

13 23. Therefore; Petitioner calls upon this Court to hear his plea, rule upon
14 the merits and, (if it feels so inclined) to refute the arguments he set
15 forth to the Arizona Court of Appeals. If the Court can find legal pre-
16 cedence for the suspension of Petitioner’s rights set forth by the First
17 Amendment, he will silence his voice, fold his tent, and end his vitu-
18 perations and impertinences.

19 24. If however; by employing the simple device of denying jurisdiction
20 and refusing to hear Petitioner’s case on the merits, this Court chooses

1 instead to ratify the suspension of Petitioner's rights under the First
2 Amendment, Petitioner will follow the same clear path the civil rights
3 leaders of the sixties did before him; take his arguments Federal Court
4 and directly to the American People, who may or may not choose once
5 again to take up arms against tyranny, judicial and otherwise, so that
6 the Rule of Law and a government of, by and for the people will not
7 perish from this earth.

8 **VI. PRAYER**

9 Petitioner herein prays the Court to:

- 10 a. Immediately vacate the Order of the Tucson Municipal Court which
11 prevents Petitioner from "speak-(ing) within 1000 ft. of any demon-
12 stration."
- 13 b. Accept jurisdiction and set forth a briefing schedule so that a fully
14 informed Court may decide the important constitutional issues Peti-
15 tioner presented to the Appellate Court. (see "Statement of Issues to
16 Arizona Appellate Court" on page 11.)
- 17 c. Provide such additional relief the Court deems proper.

18
19 RESPECTFULLY SUBMITTED this 15th day of December 2009.

20 BY

21 _____/S/_____
22 Roy Warden, Petitioner

1 **STATEMENT OF ISSUES TO THE ARIZONA**
2 **APPELLATE COURT**

3
4 I. DID RESPONDENT JUDGE EISENBERG EXCEED HIS JURIS-
5 DICTION OR LEGAL AUTHORITY WHEN HE ISSUED A
6 SENTENCING ORDER WHICH PREVENTS PETITIONER
7 FROM “SPEAK(ING) WITHIN 1,000 FEET OF ANY PUBLIC
8 DEMONSTRATION?”

9
10 II. WAS RESPONDENT JUDGE HAYS’ REFUSAL TO ALLOW
11 TESTIMONY REGARDING TUCSON POLICE DEPART-
12 MENT AND TUCSON CITY POLICY WHICH ENCOURAGES
13 “PRO-RAZA, OPEN BORDER” ACTIVISTS TO COMMIT
14 VIOLENT ACTS OR OTHERWISE DISRUPT THE POLITICAL
15 ACTIVITIES OF “ANT-RAZA CLOSE BORDER” ACTIVISTS
16 ARBITRARY, CAPRICIOUS OR AN ABUSE OF DISCRETION
17 ESPECIALLY SINCE HE GRANTED PETITIONER’S
18 REQUEST FOR A 60 DAY CONTINUANCE TO ESTABLISH
19 THE EXISTENCE OF SUCH POLICY?

20
21 III. WAS RESPONDENT JUDGE HAYS’ FINDING PETITIONER
22 WAS GUILTY OF BREACH OF THE PEACE AND MAKING
23 THREATS AND INTIMIDATION ARBITRARY, CAPRICIOUS
24 OR AN ABUSE OF DISCRETION WHEN (A) PETITIONER’S
25 ALLEGED BREACH OCCURRED SUBSEQUENT TO THE
26 PEACE BEING BREACHED BY COUNTER PROTESTORS, (B)
27 PETITIONER’S ALLEGED THREATS WERE MADE UNDER
28 DURESS⁵, (C) PETITIONER’S CHALLENGED SPEECH
29 FAILED TO MEET THE STANDARDS FOR FIGHTING
30 WORDS AND THREATS SET FORTH BY THE ARIZONA
31 SUPREME COURT IN CITIZEN⁶, AND (D) TUCSON POLICE

⁵ Alleged criminal threats “...(must also) not be the result of mistake, *duress, or coercion*.” In Re Kyle M, 200 Ariz 447 (App.)

⁶ Citizen Publishing Co. v Miller, 210 Ariz. 513. See pages 518-521 for analysis.

1 INTENTIONALLY FAILED TO PROTECT PETITIONER
2 WHILE HE ENGAGED IN PUBLIC SPEECH, VIOLATING A
3 DUTY SET FORTH BY THE UNITED STATES SUPREME
4 COURT?
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COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

October 21, 2009

RE: ROY WARDEN v. STATE OF ARIZONA
2 CA-SA 2009-0076
Pima County Superior Court Cause No. CR20083441

The following action was taken by the Court of Appeals for
the State of Arizona, Division Two, Department A on October
20, 2009,

ORDERED: The Court declines to accept jurisdiction.

Presiding Judge Espinosa, Judge Howard and Judge Ann
A. Scott Timmer participated in the determination of this
matter.

Philip G. Espinosa
Presiding Judge

500 JAN = 82009
FILED
PATRICIA A. NOLAN
CLERK SUPERIOR COURT
ARIZONA SUPERIOR COURT, PIMA COUNTY

JUDGE: HON. RICHARD S. FIELDS

09 JAN -7 PM 2:36

CASE NO. CR20083441

COURT REPORTER: NONE

BY: R. ST. GERMAINE, DEPUTY

DATE: January 6, 2009

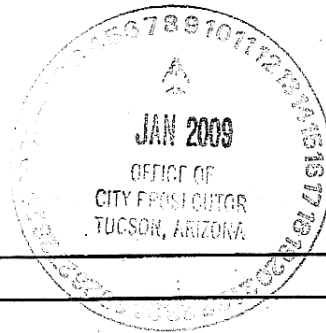
CITY OF TUCSON

Plaintiff

Vs.

ROY WARDEN

Defendant



RULING

IN CHAMBERS RULING

PROCEDURAL HISTORY

The Court has under advisement Defendant's Appeal from this action in Tucson City Court. The action arises from an event arising on March 26, 2007. On this date, the Defendant was cited with violations of: (1) A.R.S. §13-2904(1) Disorderly Conduct Fighting Violent and Seriously Disruptive Behavior; (2) A.R.S. §13-2904(2) Disorderly Conduct Unreasonable Noise; (3) A.R.S. §13-2904(3) Disorderly Conduct Abusive Language or Gestures; (4) A.R.S. §1202(A)(1) Threatening or Intimidation; and (5) A.R.S. §13-2902(A)(1) Unlawful Assembly.

On March 31, 2007, this case was assigned to Judge Hays. On April 23, 2007, The Defendant filed a Rule 10.1 for cause motion against Judge Hays and Judge Riojas. On April 23, 2007, Associate Presiding Judge Cranshaw was assigned to hear this motion. On May 18, 2007, the Defendant filed another Rule 10.1 for cause motion adding Judge Cranshaw to the Defendant's earlier Rule 10.1 motion.

On March 24, 2008, a bench trial was held before Judge Eugene Hays. At trial, the Defendant was found guilty of counts one, two, and three. Upon review, the Defendant raises four issues for appeal:

Ruling

Page 2

Date: January 6, 2009

Case No: CR20083441

- (1) Whether the Defendant's speech and conduct was protected by the First Amendment.
- (2) Whether it was proper for Judge Cranshaw to rule on the 10.1 motion for change of judge for cause.
- (3) Whether Judge Crenshaw's prior involvement with the Defendant in his judicial capacity prejudiced the Defendant, and whether the Judge Hays should have recused himself due to any alleged bias.
- (4) Whether Judge Hays properly ruled on the admissibility of witness testimony.

MERITS OF APPEAL

Jurisdiction and Standard of Review

City Court appeals are governed by the Rules of Criminal Procedure. This Court has jurisdiction pursuant to 17 A.R.S. Rules of Criminal Procedure Rule 30.1. The trial court's decision is reviewed on appeal for an abuse of discretion. *See State v. Robles*, 135 Ariz. 92 (1983) *State v. Guerra*, 161 Ariz. 289 (1989); *State v. Mincey*, 141 Ariz. 425 (1984); *State v. Tison*, 129 Ariz. 546 (1981); *State v. Girdler*, 138 Ariz. 482 (1983). Further, the appellate court must review the facts in the light most favorable to sustaining the trial court's decision. *See State v. Dann*, 205 Ariz. 557 (2003)(*en banc*); *State v. Gallegos*, 178 Ariz. 1 (1994)(*en banc*).

(1) First Amendment

The trial court found the Defendant guilty of A.R.S. §§ 13-2904(1) and (3). These statutes read:

A person commits disorderly conduct if, with intent to disturb the peace or quiet of a neighborhood, family or person, or with knowledge of doing so, such person:

1. Engages in fighting, violent or seriously disruptive behavior; or
3. Uses abusive or offensive language or gestures to any person present in a manner likely to provoke immediate physical retaliation by such person.

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T. Clayton Kamm
Law Clerk

Ruling

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Case No: CR20083441

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3 The court determined that the Defendant's behavior of flashing his taser, slapping his hip
4 where his gun was holstered, and using language such as "I'm going to blow your fucking head
5 off," was a violation of A.R.S. §§ 13-2904(1) and (3). As the trial court is in the best position to
6 view the evidence and the decision of the trial court does not appear to be "clearly erroneous"
7 this Court will not overturn the determination that the Defendant violated the two
8 aforementioned statutes.
9

10 Whether or not the Defendant's words are protected by the First Amendment is an issue
11 this Court reviews de novo. However, this Court will not reweigh the evidence. *In re John M.*
12 201 Ariz. 424, 426 (2001).
13

14 The First Amendment, applicable to the states through the Fourteenth Amendment,
15 protects the freedom of speech. The Supreme Court has stated, "[i]t is now clear that 'freedom
16 of speech and freedom of the press . . . are among the fundamental personal rights and liberties
17 which are protected by the Fourteenth Amendment from invasion by state action.'" *Chaplinsky*
18 *v. New Hampshire*, 315 U.S. 568, 570-71 (1942); *citing Lovell v. City of Griffin*, 303 U.S. 444,
19 450 (1938). While freedom of speech is a fundamental freedom, it is not absolute. *Id.* at 571.
20 Certain classes of speech, such as "fighting" words, which by their very utterance inflict injury
21 or tend to incite an immediate breach of the peace" are not protected by the First Amendment.
22 *Id.*
23

24 The Arizona Supreme Court has recently declared that fighting words are "'those
25 personally abusive epithets which, when addressed to the ordinary citizen, are, as a matter of
26 common knowledge, inherently likely to provoke violent reaction.'" *Citizen Publishing Co. v.*

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Law Clerk

Ruling

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Date: January 6, 2009

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3 *Miller*, 210 Ariz. 513, 519 (2005); citing *Cohen v. California*, 403 U.S. 15, 20 (1971). The
4 Defendant's actions and words as reiterated above can most certainly be characterized as fighting
5 words that are not protected by the Constitution.

6 The Defendant argues that his language was merely self-defense. However, the
7 Defendant should not be allowed to invite an exchange whereby he will allegedly feel threatened
8 and then use any language and actions he desires under the pretense of "self-defense." The
9 Defendant's political message is not at issue here. The Defendant was allowed to continue with
10 his political speech. What is not constitutionally protected are those words the Defendant
11 allegedly used in his self-defense. Thus, the Defendant's speech is not protected by the First
12 Amendment under these circumstances.
13

14
15 **(2) 10.1 Motion**

16 It was proper for Judge Cranshaw to rule on the 10.1 motion for change of judge for
17 cause. Rule 10.1 states:

18 In any criminal case . . . any defendant shall be entitled to a change of judge if a
19 fair and impartial hearing or trial cannot be had by reason of the interest or
20 prejudice of the assigned judge.

21 After a Rule 10.1 has been granted, Rule 10.5 states, "...the case shall be transferred
22 immediately to the presiding judge who shall reassign the case to a new judge." The
23 Arizona Supreme Court has stated that even if a presiding judge is biased against the
24 Defendant, that judge has "no duty to recuse himself from selecting the judge to hear
25 th[e] case." *State v. Eastlack*, 180 Ariz. 243, 254 (1994). The court's reasoning applies
26

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Law Clerk

where the judge in question makes “no substantive rulings involving the merits of the case.” *Id.* (internal citations omitted).

The Defendant filed a motion for change of judge for cause as to Judge Hays, the trial judge, and Judge Riojas, the judge who presided over the Defendant’s initial appearance and arraignment. This motion was set for a hearing in front of Judge Cranshaw, the Associate Presiding Judge. On the day of the hearing, the Defendant filed a Rule 10.1 motion as to Judge Cranshaw as well. If prejudice is a concern, any party “shall be entitled to a change of judge if a fair and impartial hearing cannot be had....” Rule 10.1(a). If this is the case, the moving party has 10 days after discovery to file a motion verified by an affidavit stating the specific grounds for the change. Rule 10.1(b). Judge Cranshaw ruled that the Defendant’s motion for change of judge as to himself was untimely since it was brought after the 10 days. As this ruling is a procedural ruling and not substantive, this Court finds that Judge Cranshaw had no duty to recuse himself.

(3) Judicial Bias

“A trial judge is presumed to be free from bias.” *State v. Henry*, 189 Ariz. 542, 546 (1997) (citations omitted). According to the Arizona Code of Judicial Conduct “[a] judge shall disqualify himself or herself in a proceeding in which the judge’s impartiality might reasonably be questioned, including but not limited to instances where: (a) the judge has a personal bias or prejudice concerning a party or a party’s lawyer, or personal

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2 knowledge of disputed evidentiary facts concerning the proceeding.” Arizona Code of
3 Judicial Conduct E(1)(a).

4 A judge’s opinions about a defendant that the judge learned at prior proceedings
5 are not prejudicial. *See Liteky v. U.S.*, 510 U.S. 540, 551 (1994). It is normal and proper
6 for a judge to sit in successive trials involving the same defendant. *Id.* However, “[a]
7 judge must disqualify himself from any proceeding if his impartiality might be
8 reasonably questioned or if he has a personal bias or prejudice concerning a party.” *State*
9 *v. Carver*, 160 Ariz. 167, 172 (1989); citing Rule 81, Canon 3, Rules of the Supreme
10 Court.
11

12 The Arizona Judicial Ethics Advisory Committee notes that certain red flags are
13 raised when a judge aligns himself or herself with an organization devoted to activism.
14 *Advisory Opinion 06-03*, at 2. At issue in that opinion was whether a judge could accept
15 an award from MADD (Mothers Against Drunk Driving) for excellence in adjudicating
16 DUI cases. *Id.* The Board stated that a judge could not accept an award of this kind
17 because it gives the appearance that the judge would be adversarial to those charged with
18 DUI. *Id.*
19

20 Here, the Appellant makes two arguments regarding bias. First, the appellant
21 argues that Judge Cranshaw violated the Defendant’s right to a fair trial by ruling on the
22 motion for change of judge as to Judge Hays because Judge Cranshaw had sat on
23 criminal cases regarding the appellant on previous incidents. However, there is no
24 indication from the record that Judge Cranshaw was unfair or biased during the
25
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Ruling

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proceeding at issue. Thus, this Court holds that the mere fact that Judge Cranshaw sat on numerous cases involving the appellant is not enough to make a showing of bias.

Second, the Appellant argues that Judge Hays should have recused himself from the trial because of his internet performance of "Santa's an Illegal Alien." Appellant's Brief at 11. The Appellant states that Judge Hays' performance of "Santa is an Illegal Alien" views "the deplorable (and criminal) industry of alien human and drug smuggling as something of a lark and cast[s] himself in . . . a cavalier, juvenile and romanticized light...." *Id.*

This Court does not agree with the sentiments of the Appellant. First, the Appellant was charged with disorderly conduct, using threats or intimidation, and unlawful assembly. While the Appellant's political speech was about illegal immigration, it was not his political message which found him cited with numerous statutory violations. Further, this Court views Judge Hays' performance of "Santa's an illegal alien" as a parody of the political current prevalent in the Southwestern United States. While this Court does not endorse the posting of this performance on the internet, this Court does not find that Judge Hays' performance biased the Appellant in the matter at hand.

(4) Admissibility of Testimony at Trial

A witness must be material to the moving party's case in order for a denial of that witness' testimony at trial to be a Constitutional violation. *State v. Fuller*, 143 Ariz. 571,

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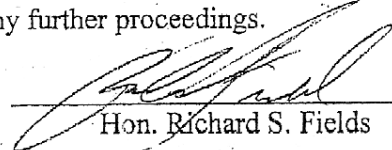
Case No: CR20083441

574 (1985). To establish materiality, the Appellant must show that the witness' testimony might result in exonerating the Appellant." *State v. Jessen*, 134 Ariz. 458, 462 (1982).

The Appellant wished to call 14 witnesses to testify at trial. The trial court ruled that the 12 witnesses who were not present for the events on the day that the Appellant was arrested could be excused. The trial court appeared to spend a relatively large amount of time parsing out what each of these 12 witnesses would testify to, how they were relevant to the issue at hand, and if they were material. Trial Transcript 4-18. As this Court does not find that the trial court abused its discretion, this Court will not overturn the trial court's ruling.

Conclusion

THEREFORE, it is ORDERED that Defendant's Appeal is DENIED. This Court AFFIRMS the Tucson City Court decision. This matter is remanded for any further proceedings.


Hon. Richard S. Fields

cc. Hon. Richard S. Fields
Tucson City Attorney-William F. Mills, Esq.
Roy Howard Warden (*pro se*)
Tucson City Court – Appeals Desk CR7030208
Clerk of Court – Exhibits Unit
Clerk of Court – Remand Desk

01-06-09

T. Clayton Kamm
Law Clerk

TUCSON CITY COURT
103 E. Alameda Street • P.O. Box 27210 • Tucson, AZ 85725-7210 • Phone (520) 791-4216

State of Arizona vs ROY WARDEN Defendant	Docket # _____ _____ CR 7030208	Agency # _____ _____ _____	SENTENCING MINUTE ENTRY <input checked="" type="checkbox"/> PLEA <input type="checkbox"/> TRIAL
--	---	-------------------------------------	--

INTERPRETER

☐ VICTIM ☐ NOTIFIED ☐ PRESENT PAGE 1 OF 1

PLEA	CITATION	CV	CR	OFFENSE/VIOLETION	OFF DATE	JUDGMENT	DISPOSITION	DISM	W	W/O
	A6652402		X	DOC	3/26/07	G	SUSP			
	B		X	DOC	"	NG				
	C		X	DOC	"	G	SUSP			
	D		X	THREATS & INT.	"	G	See below			
	E		X	UNLAW. ASSEM.	"	PREV. DISM.				

PROBATION 36 TOTAL MONTHS 24 MONTHS OF UNSUPERVISED AND 12 MONTHS OF MONITORED PROBATION

CONDITIONS: ☐ REPORT TO PROBATION OFFICE ☐ TODAY WITHIN _____ HOURS OF JAIL RELEASE

☒ VIOLATE NO LAWS ☐ HAVE NO CONTACT WITH _____

☐ STAY AWAY FROM _____

☐ OBTAIN PROOF OF _____

☒ OTHER: Possess no firearm. Anger counseling through probation. Do not speak w/in 1000ft of any public demonstration.

PROOFS: ☐ DRIVERS LICENSE ☐ VEHICLE REGISTRATION ☐ 6 MONTHS PAID INSURANCE ☐ REPAIR ☐ DOG LICENSE

☐ OTHER _____

BY _____

OR _____

FINE \$500.00 TODAY, OR THROUGH SENTENCE ENFORCEMENT OFFICE ☒ TIME PAYMENT FEE OF \$20.00

☐ INSTALLMENTS Fine or C/S through probation ☒ COMMUNITY SERVICE 50 HOURS, PROOF _____

ADMINISTRATIVE FEES ☐ WAIVED ☐ FOR COST OF APPOINTED COUNSEL _____

☐ DUI PROCESSING FEES = _____ ☐ JAIL _____ X _____ = _____ TO \$0.00

☐ RESTITUTION IN AMOUNT OF _____ TO _____

☐ INSTALLMENTS _____

☒ JAIL ☐ TIME SERVED _____ DAYS WITH CREDIT FOR _____ DAY ALREADY SERVED

(REFERENCED COMMITMENT ORDER ATTACHED)

☒ SUSPEND 90 DAYS

☐ BOND ☐ CONVERT TO FINE ☐ REFUND ☐ EXONERATE TO SURETY

I AGREE TO THE CONDITIONS OF PROBATION

I have received a copy of this Minute Entry and Notice of Appeal

☒ Defendant 8/8/1947 DOB
1501 W PRINCE RD.
#131-182 85705
 Address ZIP

☐ QUASH WARRANT

☐ SET ASIDE CIVIL DEFAULT

I certify that the defendant's finger print was affixed on the reverse side of this document upon acceptance of this plea.

MITCHELL EISENBERG
JUDGE

Mar 16, 2009
DATE

☒ FILE ☒ DEFENDANT ☒ PROSECUTOR ☐ PROBATION ☐ OTHER

3/17/09 JW

(Rev/SL6/01)

CERTIFICATE OF COMPLIANCE

I Roy Warden, Petitioner in this Petition for Review of a Special Action Decision of the Arizona Court of Appeals Division 2, do herein Declare, Swear and Affirm that this document was prepared in compliance with all the Rules of the Court, the Rules of Procedure for Special Actions, the rules regarding Petitions for Review to the Arizona Supreme Court, etc., including the following:

1. This document was prepared in Microsoft Word, using a double line spaced, proportionally spaced typeface, **14 Point Times New Roman**.
2. Including footnoting, the total number of words used, except those excluded as provided by Ariz. R. Crim. P. Rule 31.12 and 31.13, is **2032**

RESPECTFULLY SUBMITTED this 15th day of December 2009.

BY

_____/S/_____
Roy Warden, Petitioner

